

August 20, 2008

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **L08P0001**
Proposed Ordinance No. **2008-0384**

SUGARLOAF MOUNTAIN ESTATES

Preliminary Plat Application
and
Applicant Appeal of State Environmental Policy Act (SEPA)
Mitigated Determination of Non-Significance (MDNS)

Location: East of 307th Avenue Southeast, on the south side of Southeast Kent-Kangley Road

Applicant/ **9700 Partners LLC**
Appellant: *represented by* **Tom Barghausen**
18215 – 72nd Avenue South
Kent, Washington 98032
Telephone: (425) 251-6222

King County: Department of Development and Environmental Services (DDES)
represented by **Kim Claussen**
900 Oakesdale Avenue Southwest
Renton, Washington 98055
Telephone: (206) 296-7167
Facsimile: (206) 296-7051

EXAMINER PROCEEDINGS:

Hearing Opened: August 14, 2008
Hearing Closed: August 14, 2008

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. General Information:

Owner/Developer: 9700 Partners LLC
18215 72nd Avenue South
Kent, WA 98032
425-251-6222

Engineer: Barghausen Consulting Engineers
18215 72nd Avenue South
Kent WA 98032
425-251-6222

STR: 33-22-07

Location: The site is generally located east of 307th Ave SE, on the south side of SE Kent Kangley Road

Zoning: RA-5
Acreage: 630 acres
Number of Lots: 126 lots
Density: One dwelling unit per five acres
Lot Size: Approximately 2.50 acres to 3.94 acres
Proposed Use: Single Family Detached Dwellings
Sewage Disposal: On-site septic systems
Water Supply: Covington Water District
Fire District: King County Fire District No.
School District: Tahoma

Other Associated Permits: Surface Water Design Manual Adjustment file no. L08V0026
2007 KCRDCS variance (roads) file no. L08V0018

Complete Application Date: April 7, 2008

2. Except as modified herein, the facts set forth in the King County Land Use Services Division's (LUSD) preliminary report to the King County Hearing Examiner for the August 14, 2008, public hearing are found to be correct and are incorporated herein by reference. The LUSD staff recommends approval of the application, subject to conditions.
3. Barghausen Consulting Engineers, on behalf of the Applicant, have filed an appeal of portions of a condition within the July 11, 2008 Mitigated Determination of Non-Significance (MDNS) that require extensive archaeological research to be done on the proposed individual lots. The hearing on the threshold determination appeal has been consolidated with that for the preliminary plat application. The LUSD staff recommends denial of the SEPA threshold determination appeal.
4. The Applicant, 9700 Partners, LLC, proposes to subdivide 630 acres within the RA-5 zone into 126 lots for detached single family residential development. A large tract on the east side of the

property, adjacent to the western flank of Sugarloaf Mountain and containing small wetlands at its base, will be preserved in its natural state. The property is a former commercial tree farm that was logged most recently in the mid-1990s. The property is traversed by a Bonneville Power Association (BPA) easement that contains major transmission lines and towers. No site development other than segments of the internal loop road are proposed within the BPA easement.

5. The nearly square plat property lies on the south side of the Kent-Kangley Road east of Ravensdale and nearly directly east of Lake Retreat. The proposed plat loop road system will access Kent-Kangley Road in two locations. The Applicant will upgrade Kent-Kangley Road adjacent to the plat and contribute significantly to either signal or round-about improvements at the Kent-Kangley Road/Landsburg Road intersection.
6. The gravel outwash soils that characterize the site are highly porous and support infiltration of all runoff from site development. The Applicant initially proposed constructing three infiltration ponds to receive flows from the plat road system, but is now considering elimination of those ponds in favor of road construction employing pervious materials.
7. The Applicant has proposed some modifications to the language within the LUSD staff conditions, which are for the most part acceptable. Other than the archaeological requirements discussed below, the primary plat issue concerns the need to reconsider the 35% maximum clearing limit in staff condition number 25 in light of the recent decision by Division I of the State Court of Appeals in *Citizens Alliance for Property Rights v. Ron Sims* (Docket No. 59416-8). This decision held that the clearing limits on rural properties contained in KCC 16.82.150 comprise an indirect tax or charge on new development within the meaning of RCW 82.02.020 and that the County had not demonstrated this imposition to be reasonably necessary as the direct result of proposed development. The Applicant's attorney has asserted that the "Court of Appeals decision makes absolutely clear that the requirements imposed by KCC 16.82 are declared null and void and invalid" and that "any conditions imposing the provisions of KCC 16.82 on Sugarloaf plat are invalid and should be declared invalid by the Hearing Examiner."
8. The attorney's assertions oversimplify a rather more complex situation. First, the invalidation of the County ordinance will not legally take effect until the Superior Court Judge on remand enters a summary judgment in favor of the Citizens Alliance. Since the County has appealed the Division I decision to the Supreme Court, the lower court proceedings are stayed pending resolution of that further appeal. So it is the case both that the Division I opinion may be reversed or amended on appeal by the Supreme Court and that the implementing order will not be entered until the Supreme Court review is complete. Second, the provision of the clearing and grading ordinance applicable to the Sugarloaf Mountain Estates subdivision is KCC 16.82.152, not the Section 150 which was the subject of the lawsuit. While Sections 150 and 152 are similar, they are not identical. Thus there may also be questions as to whether the differences between the two sections are of critical importance.
9. In short, the ultimate fate of the County's Rural Area clearing limitations has yet to be conclusively determined. Fortunately, the Sugarloaf Applicant does not propose to perform major clearing on individual lots prior to final plat approval, so the question as to which grading requirements shall apply ultimately can be deferred until after the lots are actually sold. Condition 25 within the staff report has been rewritten to allow for such future determination of applicable clearing requirements.

10. Turning to the Applicant's appeal challenging portions of the SEPA MDNS condition mandating further archaeological investigation procedures, it needs to be noted at the outset that the Applicant is not seeking the removal of the archaeological requirements in their entirety. Rather the Applicant's challenge focuses mainly on the necessity of performing probes on each of the 126 lots proposed for platting. The Applicant contends that this level of investigation is not warranted by the known archaeological facts regarding this area. Moreover, a further important fact is that while the Applicant intends to create the new legal lots within the subdivision, minimal lot clearing will be performed at the platting stage, with actual development deferred to the eventual lot owners.
11. A memorandum from Charlie Sundberg, the County's Historic Preservation Program (HPP) Planner, summarizes the current state of knowledge concerning the Sugarloaf Mountain site:

As the Applicant's archaeological search for the literature demonstrates, little is known about this area. The literature search suggests a moderate probability for both prehistoric and historic archaeology based on limited information and no geomorphological analysis.
12. The testimony offered at the public hearing did not expand greatly the parameters of Mr. Sundberg's written observations. According to the County's database survey there are no listed historic resources either on the Sugarloaf property or immediately nearby. The concern expressed by Preservation Planner Sundberg and archaeologist Dr. LeTourneau is therefore based almost entirely on inferences drawn from generic factors. Thus, the site is midway between the Cedar and Green Rivers within a relatively level area of terrain. The Cedar River is about two miles to the north and the Green River two miles to the south. It is supposed that aboriginal groups may have traveled back and forth between these two river basins and may have passed through the Sugarloaf property in so doing. There is a historic railroad era trail that passes through the southwest corner of the property and it is known generally that early settler trails often followed established aboriginal routes. Further, the site has features that are known from studies at other locations to have been attractive amenities for aboriginal use. These include wetlands, outwash terraces and old river channels. The channels primarily depict old meander routes of the Cedar River located south of the present channel that perhaps linked up to the Green River.
13. The LIDAR relief maps contained in exhibits 32 and 35 graphically depict the channel and terrace features of interest, but these relief maps raise as many questions as they offer solutions. The Sugarloaf property is shown as a slightly elevated feature equidistant between two old primary channel routes, one just east of Sugarloaf Mountain and the other west of Lake Retreat in the current location of Rock Creek. Both of these older channels to the east and west provided overland links between the Cedar and Green River systems and each a greater abundance of aquatic resources to aboriginal travelers. Thus, while one may certainly imagine that a trail through the Sugarloaf holding could have existed, the more defined old channels to both east and west would seem to have offered more inviting routes.

CONCLUSIONS:

1. The rationale for imposing a MDNS on a development proposal is, first, that without such mitigation a proposal will have a probable significant adverse environmental impact and, second, that the mitigation proposed is supported by the agency's adopted regulatory scheme. WAC 197-11-782 defines probable as to mean "likely or reasonably likely to occur." The definition further

states that “probable is used to distinguish likely impacts from those that merely have a possibility of occurring, but are remote or speculative.”

2. The likelihood that plat development on Sugarloaf Mountain Estates will generate significant environmental impacts is, on the record before us, remote and speculative, not probable. The Sugarloaf site has some potential for generating archaeological artifacts, but such potential is only supported by very broad geographic generalities. These generalities are not sufficient to warrant the level of investigative burden placed on the Applicant and need to be pared down to a more reasonable level as the Applicant has argued. Moreover, the rigorous survey requirements authorized by KCC 20.62.150 are directed towards “known archaeological sites”, not merely sites that have some theoretical potential for producing archaeological materials. Thus, the level of generality relied upon by staff to support its specific requirements does not rise to the threshold for invoking the regulatory structure authorized by County Code. Accordingly, the appeal must be granted and the MDNS revised in the manner requested by the Applicant.
3. Regarding the preliminary plat application, if it is approved subject to the conditions imposed below, the proposed subdivision makes appropriate provisions for the public health, safety and welfare; serves the public use and interest; and meets the requirements of RCW 58.17.110.
4. The conditions of approval imposed herein, including dedications and easements, will provide improvements that promote legitimate public purposes, are necessary to serve the subdivision and are proportional to its impacts; are required to make the proposed plat reasonably compatible with the environment; and will carry out applicable state laws and regulations and the laws, policies and objectives of King County.

DECISION:

The Applicant’s SEPA threshold determination appeal is GRANTED; the MDNS condition regarding archaeological investigation will be revised in the manner requested by the Applicant. The preliminary plat application as revised and received on May 20, 2008 is APPROVED, subject to the following conditions of final plat approval:

1. Compliance with all platting provisions of Title 19A of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication that includes the language set forth in King County Council Motion No. 5952.
3. The plat shall comply with the base density and minimum density requirements of the RA-5 zone classification. All lots shall meet the minimum dimensional requirements of the RA-5 zone classification or shall be shown on the face of the approved preliminary plat, whichever is larger, except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environment Services. The applicant shall comply with the clustering requirements of KCC 21A.14.040. Open space tracts created by the clustering shall be designated as permanent open space. In the event any lot is less than 2.50 acres in size, the provisions of KCC 21A.14.040B shall apply. This will result in the reconfiguration of lots.

Any/all plat boundary discrepancy shall be resolved to the satisfaction of DDES prior to the submittal of the final plat documents. As used in this condition, "discrepancy" is a boundary hiatus, an overlapping boundary or a physical appurtenance which indicates an encroachment, lines of possession or a conflict of title.

4. The applicant must obtain final approval from the King County Health Department, prior to recording.
5. All construction and upgrading of public and private roads shall be done in accordance with the 2007 King County Road Design and Construction Standards established and adopted by Ordinance 15753.
6. The applicant must obtain the approval of the King County Fire Protection Engineer certifying the adequacy of the fire hydrant, water main, and fire flow to meet the standards of Chapter 17.08 of the King County Code.

If all lots are 35,000 square feet in size or more, or if the subdivision is outside an Urban Growth Area and is developed at a density no greater than one residential building lot per five (5) acres, or a cluster development outside an Urban Growth Area with lots under 35,000 square feet in size and offsetting permanent open space and is developed at a density no greater than one residential building lot per five (5) acres, the subdivision is exempt per K.C.C. 17.08.030. However, if fire hydrants are provided the installation of hydrants and water mains must be under permit from King County Fire Engineering.

7. Final plat approval shall require full compliance with the drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as shown on the preliminary approved plat. Preliminary review has identified the following conditions of approval which represent portions of the drainage requirements. All other applicable requirements in K.C.C. 9.04 and the Surface Water Design Manual (SWDM) must also be satisfied during engineering and final review.
 - a. Drainage plans and analysis shall comply with the 2005 King County Surface Water Design Manual and applicable updates adopted by King County. DDES approval of the drainage and roadway plans is required prior to any construction.
 - b. Current standard plan notes and ESC notes, as established by DDES Engineering Review, shall be shown on the engineering plans.
 - c. The following note shall be shown on the final recorded plat:

“All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # _____ on file with DDES and/or the King County Department of Transportation. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with plans on file.”

An applicant for a building permit may also utilize the drainage options outlined in Appendix ‘C’ of the KCWSDM, such as the use of splash blocks and vegetated flow paths.

8. The drainage facilities shall meet the requirements of the 2005 King County Surface Water Design Manual (KCSWDM). The drainage design shall meet at a minimum the Conservation Flow Control and Basic Water Quality requirements in the KCSWDM. Note that stormwater infiltration facilities are proposed for this site. Modifications to the above regulations and conditions may be considered according to the adjustment provisions of the KCWSDM.

9. A drainage adjustment (File No. L08V0026) is approved for this site. All conditions of approval for this adjustment shall be met prior to approval of the engineering plans.
10. If individual lot infiltration drainage facilities are proposed for the lots in this project, a typical lot stormwater design shall be shown on the engineering plans. The construction and permitting of the individual lot facilities shall be accomplished with the building permits; unless otherwise approved by DDES. Notes to this effect shall be provided on the final recorded plat and the engineering plans.
11. To implement the required Best Management Practices (BMP's) for treatment of storm water, the final engineering plans and technical information report (TIR) shall clearly demonstrate compliance with all applicable design standards. The requirements for best management practices are outlined in Chapter 5 of the 2005 KCSWDM. The design engineer shall address the applicable requirements on the final engineering plans and provide all necessary documents for implementation. The final recorded plat shall include all required covenants, easements, notes, and other details to implement the required BMP's for site development.
12. The following road improvements are required to be constructed according to the 2007 King County Road Design and Construction Standards (KCRDCS):

a. FRONTAGE:

Kent-Kangley Road shall be improved to the Rural Collector Arterial Standard, including the revision of the roadway profile/vertical alignment shown in the conceptual plans incorporated in the Traffic Impact Analysis (Transpo, dated January 2008). This shall include, where the roadway elevations are changed, restoration of the existing lane and shoulder widths on the north side of the roadway, and provision of a KCRDCS-compliant shoulder (width and surfacing) on the south side of Kent-Kangley Road, and, a minimum of 22-feet of pavement for vehicle traffic.

ONSITE:

- b. Road A, from Kent-Kangley Road to southerly subdivision boundary near proposed Lot 112, shall be improved at a minimum to the rural neighborhood collector street standard. This shall include a temporary turnaround (as shown on the cover sheet of the submittal received May 20, 2008) at the southerly terminus of the road.

A Type III barricade shall be installed at the southerly temporary terminus of Road "A", near proposed Lot 112. Signage shall be manufactured (aluminum sign blank) and installed (using tamper-resistant hardware) on the barricade that identifies that the roadway is temporarily closed and will be extended with future development. The sign shall provide the following message "*(street name) is temporarily barricaded and is required to be extended upon future development. Please contact King County DOT Traffic Impacts Unit at (206) 296-6596 for information.*"

The applicant has proposed a compact roundabout at the intersection of proposed. Preliminary plans for this intersection design shall be submitted to KCDOT for review in conjunction with the first engineering plan submittal.

- c. Road B, shall be improved at a minimum to the rural subaccess street standard.

- d. Road C shall be improved at a minimum to the rural subcollector street standard.
- e. Road D shall be improved at a minimum to the rural subaccess street standard.
- f. Any temporary dead-end conditions created as a result of development phasing or construction phasing, and on any streets, shall be provided with a minimum 42-foot diameter paved temporary turnaround. At the terminus of these turnarounds, as applicable, a Type III barricade shall be installed with the following:

Signage shall be manufactured (aluminum sign blank) and installed (using tamper-resistant hardware) on the barricade that identifies that the roadway is temporarily closed and will be extended with future development. The sign shall provide the following message: *“(street name) is temporarily barricaded and is required to be extended upon future development. Please contact King County DOT Traffic Impacts Unit at (206) 296-6596 for information.”*

- g. The applicant has indicated the potential for installing gates to limit access to the lots served by Tracts E, F, G, H, I, J, K, L, M and N. Plans for the gates, and associated public-street-side turnarounds, shall be submitted to the Fire Marshal and King County Department of Transportation for review, and shall either comply with the KCRDCS for (for example) proximity of fixed objects (gate posts, most notably) to the traveled-way or have a Variance submitted for proposed non-compliant designs.

Tracts E, F, G, H, I, J, K, L, M and N shall be improved to the rural minor access street standard, including a paved turnaround.

Tract Q shall be improved as a joint-use driveway.

- h. The Tahoma School District has indicated that students from the proposed subdivision will be provided bus transportation, and has requested that waiting areas and shelters be provided. The locations indicated are at the Road “A”/Road “D” intersection at the southeast corner of proposed Lot 31, and, the southeast corner of proposed Lot 125. Plans for the shelters shall be submitted to ensure compliance with the roadside obstacle requirements of the KCRDCS, and any revisions to the roadway shoulders/roadside stormwater conveyance systems needed to construct the waiting area surfacing and shelter. The locations of the waiting areas and shelters may be modified subject to the review and approval of the Tahoma School District, KCDOT and DDES.
 - i. An easement shall be provided to serve proposed Tract “Y” (the utility tract located near proposed Lot 97. This easement may connect directly Road “B”.
 - j. Modifications to the above road conditions may be considered according to the variance provisions in Section 1.08 of the KCRS.
13. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
 14. The applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The applicant has the option to either: (1) pay the MPS fee at the final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the first

option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.

15. Lots within this subdivision are subject to King County Code 21A.43, which imposes impact fees to fund school system improvements needed to serve new development. As a condition of final approval, fifty percent (50%) of the impact fees due for the plat shall be assessed and collected immediately prior to the recording, using the fee schedules in effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.
16. There shall be no direct vehicular access to or from SE Kent-Kangley Road from those lots which abut it. A note to this effect shall appear on the engineering plans and the final plat.
17. The plant islands (if any) within the cul-de-sacs shall be maintained by the abutting lot owners or homeowners association. This shall be stated on the final plat.
18. The proposed subdivision shall comply with the Critical Areas Code as outlined in K.C.C. 21A.24. Permanent survey marking, and signs as specified in K.C.C. 21A.24.160 shall also be addressed prior to final plat approval. Temporary marking of sensitive areas and their buffers (e.g., with bright orange construction fencing) shall be placed on the site and shall remain in place until all construction activities are completed.
19. Preliminary plat review has identified the following specific requirements which apply to this project. All other applicable requirements from K.C.C. 21A.24 shall also be addressed by the applicant.

Wetlands

- a. Wetlands A and B (Category III) shall have a minimum buffer of 60 feet, measured from the wetland edge.
- b. Wetland D (Category III) shall have a minimum buffer of 110 feet as measured from the wetland edge.
- c. Wetland C (Category II) shall have a minimum buffer of 110 feet as measured from the wetland edge.
- d. The wetland(s) and their respective buffers shall be placed in Critical Area Tracts (CAT).
- e. Buffer modification may be proposed, pursuant to KCC 21A.24.325, provided the total amount of buffer area is not reduced and better resource protection is achieved, subject to review and approval by a DDES Senior Ecologist.
- f. A minimum building setback line of 15 feet shall be required from the edge of all critical area tracts.

Streams

- g. Stream A -Type O shall have a minimum 25-foot buffer, measured from the ordinary high water mark (OHWM).
- h. Stream B – Type O, shall have a minimum 25-foot buffer as measured from the OHWM.
- i. The stream(s) and their respective buffers shall be placed in a Critical Area Tract (CAT) as shown on the preliminary plat map.

Geotechnical

If the applicant proposes any alteration of the approved CAD plan for Sugarloaf Mountain Estates, then the following conditions (i) and (j) shall apply prior to construction plan approval. Otherwise conditions (i) and (j) shall not apply.

- i. Determine the top, toe, and sides of 40% slopes by field survey. Provide a 50-foot buffer for these slopes. The buffer may be reduced with the submittal of a satisfactory soils report, subject to review and approval by a DDES geologist, prior to engineering plan approval.
- j. The applicant shall delineate all on-site erosion hazard areas on the final engineering plans (erosion hazard areas are defined in K.C.C. 21A.06.415). The delineation of such areas shall be approved by a DDES geologist. The requirements found in K.C.C. 21A.24.220 concerning erosion hazard areas shall be met, including seasonal restrictions on clearing and grading activities.
- k. The final engineering plans shall provide for inspections by an experienced geotechnical engineer or engineering geologist for compliance with recommendations in the project geotechnical report by Earth Solutions NW, LLC dated February 12, 2008. Written records of all inspections shall be given to the King County DDES Inspector. The following items shall have special inspections:
 - 1. Monitor and approve the placement of any rockeries, retaining walls or structural fill placement.
 - 2. Verify the suitability of bearing soils after excavation and prior to placement of structural fill, rockeries or retaining walls.
 - 3. Verify proper fill placement and compaction with field and laboratory density testing.
- l. The following note shall be shown on the final engineering plan and recorded plat:

RESTRICTIONS FOR CRITICAL AREA TRACTS AND CRITICAL AREA BUFFERS

Dedication of critical area tract(s) and buffer conveys to the public a beneficial interest in the land within the tract/critical area and buffer. This interest includes the preservation of native vegetation for all purposes that benefit the public health, safety and welfare, including control of surface water and erosion, maintenance of slope stability, and protection of plant and animal habitat. The critical area tract/critical area

and buffer imposes upon all present and future owners and occupiers of the land subject to the tract/critical area and buffer the obligation, enforceable on behalf of the public by King County, to leave undisturbed all trees and other vegetation within the tract/critical area and buffer. The vegetation within the tract/critical area and buffer may not be cut, pruned, covered by fill, removed or damaged without approval in writing from the King County Department of Development and Environmental Services or its successor agency, unless otherwise provided by law.

The common boundary between the tract/critical area and buffer and the area of development activity must be marked or otherwise flagged to the satisfaction of King County prior to any clearing, grading, building construction or other development activity on a lot subject to the critical area tract/critical area and buffer. The required marking or flagging shall remain in place until all development proposal activities in the vicinity of the critical area are completed.

No building foundations are allowed beyond the required 15-foot building setback line, unless otherwise provided by law.

20. A homeowners' association or other workable organization shall be established to the satisfaction of DDES which provides for the ownership and continued maintenance of the open space and critical area tract(s).
21. Street trees shall be provided as follows (per KCRS 5.03 and K.C.C. 21A.16.050):
 - a. Trees shall be planted at a rate of one tree for every 40 feet of frontage along all roads. Spacing may be modified to accommodate sight distance requirements for driveways and intersections.
 - b. Trees shall be located within the street right-of-way and planted in accordance with the 2007 King County Road Design and Construction Standards, unless King County Department of Transportation determines that trees should not be located in the street right-of-way.
 - c. If King County determines that the required street trees should not be located within the right-of-way, they shall be located no more than 20 feet from the street right-of-way line.
 - d. The trees shall be owned and maintained by the abutting lot owners *or* the homeowners association or other workable organization unless the county has adopted a maintenance program. Ownership and maintenance shall be noted on the face of the final recorded plat.
 - e. The species of trees shall be approved by DDES if located within the right-of-way, and shall not include poplar, cottonwood, soft maples, gum, any fruit-bearing trees, or any other tree or shrub whose roots are likely to obstruct sanitary or storm sewers, or that is not compatible with overhead utility lines.
 - f. The applicant shall submit a street tree plan and bond quantity sheet for review and approval by DDES prior to engineering plan approval.

- g. The applicant shall contact Metro Service Planning at (206) 684-1622 to determine if SE Kent Kangley Road is on a bus route. If it is a bus route, the street tree plan shall also be reviewed by Metro.
- h. The street trees must be installed and inspected, or a performance bond posted prior to recording of the plat. If a performance bond is posted, the street trees must be installed and inspected within one year of recording of the plat. At the time of inspection, if the trees are found to be installed per the approved plan, a maintenance bond must be submitted or the performance bond replaced with a maintenance bond, and held for one year. After one year, the maintenance bond may be released after DDES has completed a second inspection and determined that the trees have been kept healthy and thriving.

A landscape inspection fee shall also be submitted prior to plat recording. The inspection fee is subject to change based on the current county fees.

- 22. A fifty-foot type II landscape screen shall be provided along the frontage of all public roads. Preservation of existing healthy vegetation is encouraged and may be used to augment new plantings to meet the requirements. (KCC 21A.14.040 B5). This 50 foot Type II landscape buffer shall be shown on the final plat map, for all lots. Notes shall be added to allow this buffer to be crossed for driveways necessary to provide access from the streets to the homes to be constructed on lots in the plat. This Type II screen shall be installed as a condition of individual building permits, except for the frontage on Kent-Kangley Road, which shall be installed at the time of final plat approval. At the times of building permit, each individual lot owner shall be required to install any additional required landscaping materials necessary to accomplish the 50 foot Type II landscape buffer on their lot, as a condition of occupancy.
- 23. A Regional Trail Corridor, with a variable width of 40' -50' as approved by King County Parks, which shall be generally as shown on the plan received May 20, 2008, shall be placed in a separate tract, located along the west and south perimeter of the property to provide a direct connection to Sugarloaf Park. No improvements to this tract are required of the applicant. This Tract shall be owned and maintained by King County, and a Quit Claim Deed provided concurrent with the final plat recording documents. Notes to this effect shall be shown on the engineering plans and final plat. An off-site trail easement shall be provided from the northwest corner of the subdivision to Kent-Kangley Road, prior to engineering plan approval. In addition, the applicant shall work with King County Parks to widen the Tract where it is located within the Open Space near Sugarloaf Mountain, or in the alternative, to alter the alignment through the Open Space as may be necessary to accommodate future grading of the trail. The corridor/alignment of the trail shall be verified and approved by King County Parks prior to final recording.
- 24. Verification of Boundary Review Board approval and Annexation to the Covington Water District shall be provided prior to final recording.
- 25. Prior to final plat approval, clearing on individual lots shall be limited to areas necessary for utilities construction, site access and noxious weed removal. Future clearing of lots by individual owners shall be subject to the clearing and grading regulations in effect at the time such further clearing is proposed. A note to this effect shall be placed on the face of the final plat.

26. The following conditions have been established under SEPA authority as necessary requirements to mitigate the adverse environmental impacts of this development. The Applicant shall demonstrate compliance with these items prior to final approval.

a. Prior to engineering plan approval the applicant shall provide the following:

- (1) Additional Historical Research. Prior to conducting fieldwork, additional historical research shall be conducted using local histories and historic forest cover, mining and other maps available at the University of Washington, the State Division of Geology and Earth Resources, and other appropriate sources.
- (2) Field survey. Shovel probes shall be excavated in the following areas where slopes are less than 7%:
 - Roadways/utilities – probes at 60m intervals along centerlines of roads and non-road utility corridors where ground disturbance will occur (est. 80 probes)
 - Other: a minimum of 6 probes along the wetland buffers/lot lines of lots 101 and 102 (three probes each), 6 probes along the lot lines of lots 14 and 15 (three each) shared with the reserved tract nearest to Retreat Lake; 9 probes along the open space-wetland buffers/lot lines of lots 121, 122, and 123 (three each); 12 probes along the route of the “NPRR Trail” where it is within roadway/corridor and lot areas (shown on the GLO maps); and a minimum of 2 probes in the vicinity of any seeps or springs observed within the road/corridor and lot areas (est. 33 probes).

Probes shall measure 35-40 cm in diameter, shall be screened through ¼” mesh, and shall be excavated to undisturbed glacial material or 70cm, whichever is less, unless the water table or physical blockage intervenes.

- (3) Other subsurface testing. Concurrent with the probe testing outlined in subsection (2) above, the archaeologist shall inspect the existing excavations remaining from the work performed to conduct infiltration testing on each lot (three holes per lot), to determine if there is any visual evidence of potential sensitivity. If the archaeologist determines that there is sensitivity, then a surface probe shall be completed in such location for verification.
- (4) Other foreseeable ground disturbance. If any of the open space and reserved areas, including the BPA right-of-way, will be disturbed in the foreseeable future for construction of trails, utilities, etc., additional survey requirements shall be negotiated with the King County Historic Preservation Program (KCHPP).
- (5) Discovery. In case of a discovery of cultural material, additional shovel probes shall be excavated to delineate the boundaries of a site and to provide additional information to characterize the site. The archaeologist shall consult with KCHPP and the Washington State Department of Archaeology and Historic Preservation (DAHP), and, if prehistoric materials are discovered, concerned tribes, regarding the discovery and appropriate treatment measures.

- (6) Reporting and consultation. The archaeologist shall prepare a survey report that meets the standards and guidelines of the Washington State Department of Archaeology and Historic Preservation (DAHP) and shall submit the report to the King County Historic Preservation Program for review and approval prior to finalizing it. Copies of the final report should be submitted to KCHPP, DAHP and concerned tribes (at this point limited to the Muckleshoot Indian Tribe).
 - (7) Modifications to the above conditions may be considered, subject to the review and approval of the King County Historic Preservation Program.
- b. The proposed project will have a significant adverse impact, as defined at KCC 14.80 at the intersection of Landsburg Road SE at Kent-Kangley Road. A Capital Improvement Project, CIP 400107 is identified for resolving the safety issues (a HAL) and the level-of-service issues at this location. However, the funding for this improvement, in the current CIP budget is limited to the preparation of a Conceptual Design Report [CDR] – no funding is included in the current budget for engineering design, right-of-way acquisition, or construction. The option exists for either signalization of the intersection or construction of a compact roundabout – with the decision to be made via the CDR.

In order to mitigate the significant adverse impact (KCC 14.80) identified in the traffic impact analysis, at the horizon year (2013) of the development, the applicant shall, at the time of recording the first phase, either

- (1) pay a proportionate share (estimated at 12.4%) of the total cost (design engineering, right-of-way acquisition, construction, etc.) of CIP 400107 (Landsburg Road SE at Kent-Kangley Road intersection improvements) if full funding (right-of-way, design, and construction) has been incorporated into the County's Capital Improvement Program within a period of two years (allowing for design schedules, right-of-way negotiations, and construction advertisement and award) of the date of recording, or
- (2) if full-funding (right-of-way, design, and construction) is not programmed in the Capital Improvement Program budget, either
 - (a) construct an actuated traffic signal system within existing right-of-way, including related appurtenances and roadway shoulder improvements, or
 - (b) deposit, into the account for CIP 400107, the estimated cost (\$300,000) for constructing a traffic signal system, which may be used for constructing the selected construction project design alternative: signalization or construction of a compact roundabout.

ORDERED this 20th day of August, 2008.

Stafford L. Smith
King County Hearing Examiner *pro tem*

NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) ***on or before September 3, 2008***. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council ***on or before September 10, 2008***. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, 516 3rd Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

MINUTES OF THE AUGUST 14, 2008, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L08P0001.

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing were Kimberly Claussen, Bruce Whittaker, Kristen Langley and Alex Perlman representing the Department; Tom Barghausen the Applicant; and Joan Burlingame, Charles Sundberg and Phil LeTourneau.

The following Exhibits were offered and entered into the record:

- Exhibit No. 1 Department of Development and Environmental Services file no. L08P0001
- Exhibit No. 2 Department of Development and Environmental Services Preliminary Report, dated August 14, 2008
- Exhibit No. 3 Application for Land Use Permits received February 21, 2008
- Exhibit No. 4 State Environmental Policy Act (SEPA) checklist received February 21, 2008
- Exhibit No. 5 SEPA Mitigation Determination of Non-Significance (MDNS) issued July 11, 2008
- Exhibit No. 6 Affidavit of Posting indicating a posting date of April 18, 2008; received by DDES on April 22, 2008
- Exhibit No. 7 Revised preliminary plat map received May 20, 2008
- Exhibit No. 8 Assessors SW/SE/NW/NE 33-22-07; NW 3-21-07; NW/NE 4/21-07; NE 5-21-07; SW 27-22-07; SW/SE 28-22-07; SE 29-22-07; NE/SE 32-22-07; SW/HNW 34-22-07
- Exhibit No. 9a Notice of Appeal for Applicant's appeal of SEPA MDNS Condition No. 1 received July 15, 2008
- Exhibit No. 9b Appeal Statement for Applicant's appeal of SEPA MDNS Condition No. 1 August 4, 2008
- Exhibit No. 10 Revised Conceptual Drainage Plan received May 20, 2008
- Exhibit No. 11 Level 1 Off-Site Drainage Analysis prepared by Barghausen Consulting Engineers, Inc. (Barghausen) and received February 21, 2008
- Exhibit No. 12 Barghausen's 100 Year Flood Plain Analysis received February 21, 2008

- Exhibit No. 13 Surface Water Design Manual Requirements Standards Adjustment (File No. L08V0026) issued May 29, 2008
- Exhibit No. 14 Geotechnical Engineering Study by Earth Solutions NW LLC received February 21, 2008
- Exhibit No. 15 Addendum to Geotechnical Engineering Study (Exhibit 14) received May 20, 2008
- Exhibit No. 16 Transportation Impact Analysis prepared by The Transpo Group and received February 21, 2008
- Exhibit No. 17 Memorandum as Addendum to Transportation Impact Analysis (Exhibit 16) received May 20, 2008
- Exhibit No. 18 Wetland, Stream and Wildlife Assessment prepared by Chad Armour, LLC received February 21, 2008
- Exhibit No. 19 King County Road Services Variance Approval No. L08V0018
- Exhibit No. 20 Archaeological and Historical Literature Review by HRA dated May, 2008
- Exhibit No. 21a Letter from Department Archaeology and Historic Preservation dated April 28, 2008
- Exhibit No. 21b Letter from Department Archaeology and Historic Preservation dated May 28, 2008
- Exhibit No. 22 Muckleshoot Tribe letter to DDES regarding possible archaeological sites at proposed plat location
- Exhibit No. 23 Water Availability Certificate received February 21, 2008
- Exhibit No. 24 Bonneville Power Administration/Department of Energy Non-Transferable Land Use Agreement received May 20, 2008
- Exhibit No. 25 2007 Aerial photograph of proposed plat
- Exhibit No. 26 Letter dated August 11, 2008 from Charles Watts, on behalf of the Applicants, to Hearing Examiner regarding a recent Court of Appeals decision on the legality of KCC 16.82
- Exhibit No. 27 Revised Plat Clearing Limits map dated July 31, 2008
- Exhibit No. 28 Applicant's suggested changes to DDES conditions dated August 14, 2008
- Exhibit No. 29 Applicant's suggested changes to DDES condition 26 dated August 14, 2008
- Exhibit No. 30 Rock Creek Valley Conservation Plan and Priorities issued by Friend of Rock Creek Valley
- Exhibit No. 31 Annotated version of Exhibit 28, page 2: DDES edits
- Exhibit No. 32 Charlie Sundberg memorandum, on behalf of the King County Historic Preservation Program, detailing rationale for their recommendations to DDES regarding archaeological survey requirements, dated July 23, 2008
- Exhibit No. 33 Philippe LeTourneau letter explaining rationale for recommendation of survey requirements, dated August 13, 2008
- Exhibit No. 34 Philippe LeTourneau memorandum in response to Applicant's SEPA Appeal Statement, dated August 13, 2008
- Exhibit No. 35 Plot of cultural resource data from King County Historical Preservation Databases over LIDAR Relief Map
- Exhibit No. 36 Curriculum Vitae of Philippe David LeTourneau